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No. 91-1595

In The

Supreme Court of the United States

October Term, 1991

JAY H. GLASSER,

Petitioner,

v.

A.H. ROBINS COMPANY, INC. and
DALKON SHIELD CLAIMANTS TRUST,

Respondents.

**Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Fourth Circuit**

MOTION OF DALKON SHIELD ALLIANCE FOR JUSTICE FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*, IN SUPPORT OF PETITIONER *and* BRIEF *AMICUS CURIAE*

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INTRODUCTION

Pursuant to Rule 37.2 of the Rules of this Court, the Dalkon Shield Alliance for Justice hereby moves for leave to file its brief *amicus curiae* (annexed hereto), in support of petitioner Jay Howard Glasser. Respondent Dalkon Shield Claimants Trust has refused to consent to the filing of this brief.

INTEREST OF THE *AMICUS CURIAE*

The Dalkon Shield Alliance for Justice is a coalition founded to protect the rights of claimants injured by the faulty Dalkon-Shield birth-control device. The membership of the Alliance is approximately 3,000, including both represented and unrepresented claimants, the majority of whom reside in the United States, with others residing in various foreign countries. The Alliance is one of several non-profit support groups throughout the United States and Canada that have worked separately, but always for the same cause: to give comfort, encouragement, assistance, and unbiased information to Dalkon-Shield claimants who are uninformed about the complex issues and procedures involved in the A.H. Robins bankruptcy case.

When respondent Dalkon Shield Claimants Trust was first established and settlement offers began to arrive, Dalkon-Shield claimants' support groups felt secure as to the ability and integrity of the Trust. Unfortunately, the Alliance and other groups soon realized that the Trust intended to function as an *adversary* towards many claimants, and that therefore a unified effort among claimants was needed to expose and oppose the secrecy, inconsistency, intimidation, inadequate responses, and legal ploys the Trust used against claimants, most of whom are unrepresented and uneducated in medical or legal terminology and procedures.

By filing its annexed brief *amicus curiae*, the Alliance hopes to bring to this Court's attention the "real-world" problems of Dalkon-Shield victims, and thereby to emphasize the harm the muzzling of Dr. Glasser (and,

potentially, of many others similarly situated) will do to the people who need expert assistance to perfect their claims and thereby redress their injuries.

CONCLUSION

WHEREFORE, the Dalkon Shield Alliance for Justice respectfully prays that the Court grant its motion, and accept its brief *amicus curiae*.

Respectfully submitted,

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BRIEF *AMICUS CURIAE* OF DALKON SHIELD ALLIANCE FOR JUSTICE, IN SUPPORT OF PETITIONER

INTRODUCTION

Pursuant to its annexed motion for leave to file under Rule 37.2 of the Rules of this Court, the Dalkon Shield Alliance for Justice hereby files its brief *amicus curiae,* in support of petitioner Jay Howard Glasser.

INTEREST OF THE *AMICUS CURIAE*

The interest of the Alliance in participating in this case as *amicus curiae* is set out in its foregoing motion, *ante*.

ARGUMENT IN SUPPORT OF THE PETITIONER

This Court should grant Dr. Glasser's petition, because the lower courts' denial of the availability of Dr. Glasser's services to thousands of Dalkon-Shield claimants is only one – if a particularly egregious – example of many actions taken by respondent Dalkon Shield Claimants Trust to isolate claimants from the professional guidance and counsel that are absolutely necessary for them to make informed choices, to present their cases correctly, and to obtain fair settlements for their injuries.

Although the pattern of deception by respondents A.H. Robins Company and the Trust dates back to 1970, the Alliance will not burden the Court with an extensive "blow by blow" description of the war in which Dr. Glasser's petition is but one battle. However, the Court should be aware that, because it was inexpensive and promised to require very little of the user, the defective Dalkon-Shield birth-control device was accepted by thousands of women who are, all too often, uneducated and underprivileged. Many of the claimants eventually injured by this device have no access to television, radio, and newspapers – and may not even speak English. Few are knowledgeable about medical and legal practices, terminology, or procedures. Many are naive and helpless, yet are being callously denied access to the most basic

information that they need to document and perfect their claims.

Dr. Glasser's situation is a perfect example of this denied access. Dr. Glasser is not an attorney. He is highly regarded for his knowledge of statistical methodology and his awareness of the problems associated with the Dalkon Shield. Due to his expertise he was employed as a consultant to review "closed files" and assist the District Court in estimating the amount of money necessary to fairly compensate all claimants.

If these "closed files" had offered any privileged insight into the processes of the Trust and the awards to be made, the lower courts' silencing of Dr. Glasser might be understandable. However, as was revealed during the Estimation Hearing, the majority of information that Dr. Glasser could have gleaned from the "closed files" was misleading, inaccurate, and incomplete. Expert after expert testified at the Estimation Hearing as to the impossibility of arriving at correct amounts for the claims with the material they were given. Proof of this is seen when one looks at the estimations submitted, all by leading authorities, that range upward to 7 billion dollars. This information, if disclosed, would definitely *not* give a claimant using Dr. Glasser's service a "leg up". If anything, the information is so misleading that it would most surely *harm* anyone who counted on it as statistical truth.

Those who have had access to all of this information through public disclosure now find themselves very disappointed. One support group published the data from these "closed files" which were made available to the public, projecting median payments for certain injuries.

From text available to the public and being present during the Estimation Hearing, this group believed that the data must surely have been more reliable than the experts suggested. However, with some history established, the Trust most certainly has not used the information from the Estimation Hearing to determine the value of individual injuries – rather, payments for many injuries are far less than expected.

That Dr. Glasser is being denied the right to assist claimants and that claimants are being denied the moderately priced services of Dr. Glasser in order to protect "confidential" information is absurd and a guise to isolate claimants from as much informed guidance as possible. In proof that the District Court which issued this restraining order recognizes that the protected information has *no* value, the Alliance need only quote from the Honorable Robert R. Merhige, Jr., United States District Judge, during the hearing on Administrative Order Number One which took place on May 21, 1991, in Richmond, Virginia:

> "I can't get worked up about the settlement offers of Robins. I know – I was a judge here. I had Dalkon Shield cases. . . . They were trying to buy peace, and there was no peace. So I am not impressed with the offers that were made by Robins."

If the District Court was not "impressed" with the historical data and offers, and considered them excessive and of very little value, why then has it imposed this restraint on Dr. Glasser?

The Alliance submits that this is only one more element in a pattern of actions designed to discourage and

prevent the typical uneducated victim from having access to guidance and assistance in this very complex case.

Very serious problems in management and attitude at the Dalkon Shield Claimants Trust are affecting tens of thousands of lives. Denial of rights of claimants are glaring. Dr. Glasser is not being prevented from providing services because of some "secret" information he alone possesses. That information was disclosed in open court and carried very little weight at that time and now. Rather Dr. Glasser is being prevented from assisting claimants because the "powers that be" do not want claimants to obtain the best possible advice and support.

CONCLUSION

In sum, the Alliance finds it difficult to accept that our judicial system would allow so many unrepresented and legally unprepared claimants to be thrown, stripped of guidance, into a process that is by nature and design complex, adversarial, and even hostile to their rights. Reversing the injustice done to Dr. Glasser will not totally cure the problems described in this brief; but it will be a necessary and worthwhile first step.

For these reasons, *amicus curiae* Dalkon Shield Alliance for Justice respectfully prays that this Court grant the petition.

Respectfully submitted,

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